

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

ELBERT L. DULEY,

Plaintiff,

vs.

Civil Action 2:08-CV-751  
Judge Sargus  
Magistrate Judge King

OHIO DEPT. OF REHAB. & CORR./  
BUREAU OF SENTENCE COMPUTATION,

Defendant.

REPORT AND RECOMMENDATION

This is a civil rights action by plaintiff, a state prisoner. On August 6, 2008, this Court directed the United States Marshal to effect service of process on the named defendant and granted the defendant forty-five (45) days after service to respond to the complaint. Doc. No. 6. The United States Marshal made service of process on the defendant, which was completed on August 18, 2008. See Doc. No. 11. The response to the complaint was therefore due on October 1, 2008. On that date, defendant filed its answer. See Doc. No. 14. Under these circumstances, *Plaintiff's motion for Entry of Default and Motion for Summary Judgment*, based upon the mistaken assertion that defendant is in default for answer, is without merit.

It is therefore **RECOMMENDED** that *Plaintiff's Motion for Entry of Default and Motion for Summary Judgment*, Doc. No. 15, be **DENIED**.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within ten (10) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in

question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1); F.R. Civ. P. 72(b). Response to objections must be filed within ten (10) days after being served with a copy thereof. F.R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Federation of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

October 8, 2008

s/Norah McCann King  
Norah M'Cann King  
United States Magistrate Judge